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July 20, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Re: DBS Service to Hawaii; IB Docket No. 98-21; EX PARTE

Dear Ms. Salas:

We note that in recent weeks, representatives of the State of Hawaii ("Hawaii") have met with several Commissioners' offices in order to reiterate Hawaii's dissatisfaction with the current level of direct broadcast satellite ("DBS") service being offered to residents of Hawaii. Hawaii continues to urge dramatic marketplace intervention by the Commission to force DBS providers to redesign their systems in order to provide service to the islands that is "'comparable' in content and quality to DBS service in the rest of the United States." *See, e.g.,* Ex Parte Letter from Bruce A. Olcott, Counsel to Hawaii (July 11, 2001). On behalf of DIRECTV, Inc. ("DIRECTV"), we wish to make two points regarding Hawaii's presentation.

*First*, DIRECTV takes issue with Hawaii's continued disparagement of the DBS services that are offered to residents of Hawaii, and the progress that DBS providers have made in offering these subscribers a competitive alternative to their incumbent cable television service. In its initial comments in this proceeding more than two years ago -- when there was no DBS service to Hawaii at all -- DIRECTV expressed the view that the Commission's current geographic service rules were sufficient to ensure that DBS service would become a reality for potential subscribers in Hawaii. *That prediction has come true.* Today, both EchoStar and DIRECTV serve Hawaii with attractive packages of DBS programming.

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As the Commission observed late last year, DIRECTV's initial Hawaii Choice offering "includes a choice of over 110 programming choices, which DIRECTV expects to expand."<sup>1</sup> While it is true that there are limits to DIRECTV's current signal coverage of Hawaii – only two satellites to date, DIRECTV 1R and DIRECTV 6, can reach Hawaii – DIRECTV has developed four programming packages for Hawaii that in fact offer customers access to more than 120 channels, including a wide variety of Spanish-language channels, and more pay per view and premium movie service channels than offered by *any other* multichannel video provider that serves the islands. These programming packages are:

- **Hawaii Choice - \$19.99 per month**

Offering 44 popular channels from DIRECTV TOTAL CHOICE service including: American Movie Classics, Animal Planet, Biography Channel, Boomerang, Bravo, Comedy Central, Court TV, C-Span2, Discovery Kids, Disney West, DIY, E!, Foot Network, Fox News, Fox Sports West, Fox Sports West II, FX, FXM, Galavision, Golf Channel, History Channel, HGTV, Home Shopping Network, Learning Channel, Lifetime, MSNBC, MTV, MTV2, Nickelodeon West, Noggin, Odyssey, Oxygen, PAX TV, PBS Kids, QVC, Sci-Fi, SoapNet, Speedvision, Toon Disney, Travel Channel, TV Land, Univision, Valuevision and VH1.

- **Hawaii Choice Plus - \$21.99**

Includes the 44 Hawaii Choice services, plus two STARZ! channels: STARZ! West and STARZ! Theater East.

- **Opción Hawaii - \$21.99**

Offers 44 Hawaii Choice services plus 20 Spanish-language channels, including Cine Latino, CNN Espanol, Canal Sur, Discovery en Espanol, Fox Sports World en Espanol, GEMS TV, Utilisima, MTV S, Music Choice (7) PUMA TV, TV Chile, Weather Channel/Canal del Tiempo, TELEMUNDO East and West, TELEMUNDO International (news), TVE and Univision West.

- **Opción Hawaii Plus - \$23.99**

Offers 44 Hawaii Choice channels, plus 20 Spanish-language channels and two STARZ! channels.

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<sup>1</sup> In the Matter of DIRECTV Enterprises, Inc.; Application for Authority to Launch and Operate a Direct Broadcast Satellite Service Station, *Order and Authorization*, SAT-LOA-20000505-00086 (rel. Nov. 24, 2000), at ¶ 11.

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- **Premium movie channel packages include:**

HBO/SHOWTIME (19 channels) - \$28.00, HBO (11 channels) - \$18, SHOWTIME (9 channels) - \$10 and PLAYBOY - \$12.99

- **Other movie packages available include:**

HBO/HBO Family (8 channels) - \$12, Cinemax (4 channels) - \$12, SHOWTIME/FLIX (7 channels) - \$12, The Movie Channel (3 channels) - \$12, IFC/Sundance (2 channels) - \$6 and Plus STARZ! (2 channels) \$6.

- **Other channels include:**

Eleven public interest channels (free) and nine pay-per-view channels.

In short, market forces, in conjunction with the Commission's existing geographic service requirements, have resulted and will continue to result in the natural and efficient geographic expansion of DBS service to Hawaii. Hawaii's proposals to create more draconian geographic coverage requirements are over-regulatory and unnecessary.

*Second*, as a legal matter, DIRECTV observes that Hawaii's understandable desire to expedite the provision of expanded DBS service to the State is causing Hawaii to continue to advocate an unreasonable and unsupportable interpretation of the Commission's current geographic service requirements. Although Hawaii argues that Section 100.53 of the Commission's Rules requires DBS providers to provide service that is "comparable" in terms of quality and content to services offered to the rest of the United States, this provision does no such thing. Instead, the rule strikes a balance among the goal of promoting service to Hawaii, the physics of satellite transmission from different orbital locations, and the expectations of Congress and consumers that DBS operators will meet other important public interest goals and service objectives, as well. These include: (i) offering local broadcast channels via DBS satellites in as many local U.S. markets as possible; (ii) continuing to dedicate capacity to attractive public interest programming; (iii) continuing to develop innovative offerings to serve ethnic and underserved constituencies; and (iv) exploiting DBS spectrum to offer high-definition and advanced service capabilities. Against this backdrop of competing public policy and service obligations, the current rules do not require that DBS services on particular satellites be forcibly reconfigured at any cost in the manner that Hawaii suggests.<sup>2</sup> DIRECTV provides more detail of this analysis in the attached summary of the rule's requirements.

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<sup>2</sup> See, e.g., *Ex Parte* Response of DIRECTV, Inc., File No. SAT-LOA-20000505-00086 (Aug. 3, 2000). DIRECTV hereby incorporates its filings in connection with file No. SAT-LOA-20000505-00086 herein by reference, as Hawaii raised similar arguments in that proceeding, to which DIRECTV has fully responded.

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Developments since 1995 confirm that the geographic service requirements then imposed by the Commission are indeed working. In conjunction with these rules, DBS operators are continually seeking to maximize their service offerings where technically feasible. The Commission should permit DBS operators to retain the discretion and flexibility to respond to market dynamics without artificial constraints. The existing geographic service rules should not be changed or unreasonably distorted through interpretive exercise, as Hawaii has advocated.

Respectfully submitted,

  
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Gary M. Epstein  
James H. Barker  
of LATHAM & WATKINS

Counsel for DIRECTV, Inc.

Enclosure

cc: Attached Distribution

## **Hawaii Has Misinterpreted the DBS Geographic Service Requirement**

1. Section 100.53 of the Commission's rules provides as follows:
  - (a) Those holding DBS permits or licenses as of January 19, 1996 must either:
    - (1) Provide DBS service to Alaska or Hawaii from one or more orbital locations before the expiration of their current authorizations; or
    - (2) Relinquish their western authorizations after January 19, 1996 at the following orbital locations: 148° W.L., 157° W.L., 166° W.L., and 175° W.L.
  - (b) Those acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location.
2. The rule strikes the proper balance in addressing the special challenges of DBS service provision to Alaska and Hawaii, accounting for the technical feasibility of providing DBS service to these states from particular orbital locations. The rule recognizes that "due to various technical limitations not all DBS orbital positions necessarily will be capable of serving all areas of the United States with the same size receive antenna dishes." MCI-EchoStar Order, 15 Comm. Reg. (P&F) 1038 (1999), at ¶ 41.
  - a. The rule requires that those DBS services offered "from the acquired orbital location" be offered to Alaska and Hawaii if it is technically feasible to do so.
  - b. Even where service is technically feasible from an acquired orbital location, the rule does not require services from that location to be offered if such service "would require so many compromises in satellite design and operation as to make it economically unreasonable." 1995 Report and Order, IB Docket No. 95-168, at ¶ 128; see MCI Telecommunications Corp., 15 Comm. Reg. (P&F) 1038 (1999), at ¶ 42.

3. In essence, Hawaii argues that once a satellite is introduced into a DBS system that is technically capable of offering service to Hawaii from a particular location, much more than the programming from that satellite and location must be offered, *i.e.*, the entire DBS system must be re-configured across satellites and orbital locations with the sole priority of ensuring that Hawaii subscribers receive programming that is "'comparable' in content and quality to DBS service in the rest of the United States." 7/6/01 Hawaii Ex Parte Letter. This proposed interpretation (or rule revision) is unreasonable and leads to terrible public interest results. Hawaii's proposal:
  - a. Has no basis in the text of the current rule.
  - b. Would require tremendous expense and redesign of DIRECTV's DBS system.
  - c. Would require "double illumination" of Hawaii and CONUS, which would require massive, duplicative waste of scarce channel capacity.
  - d. Ignores entirely other service priorities mandated by Congress, *e.g.*, designing system and allocating capacity to provide public interest programming, local-into-local service, and advanced services.
  - e. Ignores the benefits of attractive service packages currently offered by DIRECTV to Hawaiian residents.
4. DIRECTV is actively advancing the goal of providing robust DBS service to Hawaii.
  - a. DIRECTV has not "hidden" behind the literal requirements of the Commission's rule.
  - b. DIRECTV has undertaken the effort, cost and expense to develop and introduce specially created packages of programming for Hawaiian subscribers.
  - c. DIRECTV is committed to upgrading and improving Hawaii service.

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